



Serial No. 10/776,071
Appeal Brief
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Dingman, et al.

Conf. No.: 2107

Art Unit: 3782

Serial No.: 10/776,071

Examiner: Margaret Linnea Olson

Filed: Feb. 11, 2004

Title: APPARATUS HAVING A
BOTTOM OPENING POCKET

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Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF PURSUANT TO 37 C.F.R. §§ 41.31 AND 41.37

This Appeal Brief is being filed in furtherance of the Notice of Appeal which was filed on April 7, 2008, by electronic transmission to the Patent Office.

The Commissioner is authorized to charge the requisite fee of \$255.00 for this Appeal Brief per the attached payment form.

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1. REAL PARTY IN INTEREST

The real party in interest is Tough Traveler Ltd., the Assignee of the above referenced application by virtue of the Assignment to Tough Traveler Ltd. by Ronald A. Dingman, Inna Spektor and Nancy Gold, recorded at Reel 014980 Frame 0551, and dated Feb. 11, 2004. Accordingly, Tough Traveler Ltd. will be directly affected by the Board's decision in the pending appeal.

2. RELATED APPEALS AND INTERFERENCES

The Appellant is unaware of any other appeals or interferences related to this Appeal.

3. STATUS OF CLAIMS

Claims 21-40 are currently pending, are currently under final rejection and, thus, are the subject of this Appeal.

4. STATUS OF AMENDMENTS

The Appellant has not submitted any amendments subsequent to the Final Office Action mailed on Feb. 2, 2008, and therefore, there are no outstanding amendments to be considered by the Board.

5. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates generally to apparatuses for carrying items, and more specifically, to an apparatus that includes at least one bottom opening pocket. *See* Page 1: lines 9-10. As noted in the specification, the apparatus can be configured to be carried by hand, worn on the body of an individual, or configured to hold an individual in a section adjacent to the bottom opening pocket. *See* Page 3: lines 4-6. The apparatus may comprise a means for holding the apparatus on the body of an individual. *See* Page 3: line 14. The apparatus may further comprise a pocket attached to the means for holding. *See* Page 3: lines 14-15. The pocket includes an opening at the bottom of the pocket. *See* Page 3: line 16. The opening may be covered by a flap which is attached at

the outer edge of the pocket, and may be opened away from the body. *See* Page 3: lines 16-17. The flap covering the bottom opening pocket may be permanently affixed to the outer edge of the pocket and releasably attached to the inner edge, so that a user may release the contents of the bottom opening pocket by pulling down the flap. *See* Page 7: lines 17-22. A pull-cord may be attached to the flap to allow a user to readily locate and open the flap. *See* Page 8: line 18. An embodiment in accordance with the present invention is a backpack with a bottom-opening pocket. *See* Page 6: lines 1-2; *see also* Fig. 1.

A pair of straps allowing adjustment of an area of the bottom opening pocket, in order to contain objects of various sizes, may also be attached to the bottom opening pocket. *See* Page 9: lines 4-6; *see also* Fig 3.

Furthermore, the apparatus may consist of a wheelchair having a bottom opening pocket attached thereto. *See* Fig. 7.

Whereas conventional apparatuses for carrying items do not provide rapid, easy and safe access to the contents from a bottom opening pocket, embodiments of the present invention allow a user to rapidly retrieve items via the bottom-opening pocket in a controlled manner to reduce the likelihood of delay in obtaining the items or damage to the items thus released. *See* Page 1: line 22, Page 2: lines 1-2; *see also* Page 4: lines 8-9.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The Appellant respectfully urges the Board to review and reverse the Examiner's ground of rejection in which the Examiner rejected claims 21, 26, and 28-29 under 35 U.S.C. § 103(a) as being unpatentable over Young (US 6,015,072, hereinafter "Young") in view of Roh (US 6,283, 347, hereinafter "Roh"); the Examiner rejected claims 22-23 under § 103(a) as being unpatentable over Young in view of Roh, and further in view of Rohrbach et al. (US D426951, hereinafter "Rohrbach"); the Examiner rejected claims 24-25 as being unpatentable over Young in view of Roh and further in view of Lewis (US 5,060,314, hereinafter "Lewis"); the Examiner rejected claims 30-32 and 34-36 under § 103(a) as being unpatentable over Ellis (US 3,105,359, hereinafter "Ellis"), in view of Roh and further in view of Rohrbach; the Examiner rejected claims 37-38 and 40 under § 103(a) as being unpatentable over Ellis in view of Roh and further in view of

Wakamatsu (JP 2002-159317A, hereinafter, “Wakamatsu”); and the Examiner rejected claims 33 and 39 under § 103(a) as being unpatentable over Ellis and Roh in view of Wakamatsu and further in view of Rohrbach. The Appellant respectfully traverses these rejections.

7. ARGUMENT

As discussed in detail below, the Examiner has improperly and without basis rejected the pending claims because at least one limitation in each claim is not taught by the combination of references cited by the Office. Accordingly the Appellant respectfully requests full and favorable consideration by the Board, as the Appellant strongly believes that claims 21-40 are currently in condition for allowance.

A. The Examiner’s rejection of independent claim 21 and dependent claims 22-29 is improper because the cited references do not teach a bottom opening pocket.

Applicants submit that the cited references, Young and Roh, fail to teach or suggest each and every element of independent claim 21. As described above, the present invention comprises an apparatus with a bottom opening pocket allowing an individual to rapidly and safely retrieve the contents of the pocket, relying on the action of gravity to expedite the removal of the contents from the pocket. Applicants submit that Young fails to teach a backpack including the claimed feature of “a bottom opening pocket attached to an exterior side of the large pocket,” (claim 21, lines 7-8 (emphasis added)). Young’s backpack instead teaches a lower portion 12, which includes openings fastened by zippers 80 and 84. As is very clearly illustrated in Young’s FIG. 5, the openings of lower portion 12 are located on an exterior side and along the top edge of lower portion 12 when the backpack is oriented “in an upright position.” Therefore, these pockets cannot possibly teach the feature of a bottom opening pocket, which would require that the opening be on the bottom of lower portion 12, rather than near its upper

edge, as depicted. Accordingly, neither these pockets, nor the balance of Young, teach the feature of a bottom opening pocket.

Applicants submit that Young also fails to teach the feature of “a bottom opening pocket” (claim 21, line 7) including “an opening at a bottom of the holding area when the backpack is in the upright position” (*id.*, line 12-13 (emphasis added)). Instead, Young teaches a top- or side- opening pocket located on the lower portion of the backpack, including an opening at the top and side of the holding area, e.g., lower portion 12, which are fastened using zippers 80 and 84. This feature is in contrast with the “opening at the bottom of the holding area” of claim 21. Applicants respectfully submit that the Young reference is devoid of any teaching of an opening located on the bottom panel of the pack.

Applicants further submit that Young fails to teach the feature of “a bottom opening pocket” (claim 21, line 7), including “a bottom flap for covering the opening, the bottom flap permanently affixed to at least one of: the outer side, the left side, or the right side and extending therefrom during opening” (*id.*, lines 14-16). As discussed above, Young does not teach a bottom opening pocket of any kind. Further, the pockets taught by Young, side- and top-opening as they are, also do not include any type of “flap for covering the opening” whatsoever. Young’s pockets are instead fastened shut using zippers 80 and 84, which draw the sides of the opening together, in lieu of a flap covering the opening.

In addition, Roh, does not cure the defects in the rejection left by Young. Applicants submit that Roh’s flap 316, “an opaque panel ... on the top and rear to provide protection from sun exposure” (col. 5, lines 51-52) not only fails to teach a “bottom flap permanently affixed to at least one of: the outer side, the left side, or the right side and extending therefrom during opening” (claim 21, lines 14-16), but also fails to render such a bottom flap obvious. Not only is Roh’s flap 316 located specifically on the top rather than the bottom of the pack, but it does not, as the Office asserts, “allow the pocket to be easily accessed from certain angles” (Office Action, p. 3). Even if it did, however, Applicants assert that one having ordinary skill in the art would not be motivated to combine the teachings of Young with those of Roh because Young’s zipper-fastened pockets neither require nor would utilize a flap to cover the opening.

Applicants respectfully submit that claims 22-29 are allowable for reasons stated above relative to independent claim 21, as well as for their own additional claimed subject matter.

For at least the reasons set forth above, the Applicants respectfully assert that the cited references, taken alone or in combination, do not disclose the above recited features of claim 21, and therefore cannot possibly render the recited subject matter obvious. As such, the Applicants respectfully request that the Board overturn the rejection and allow claim 21 as well as the claims that depend therefrom.

B. The Examiner's rejection of independent claim 30 and dependent claims 31-36 is improper because the cited references do not teach a rectangular pocket that can be opened while adjacent to a user's back, nor one which can be adjusted to contain objects of various sizes.

With respect to claim 30, Ellis, Roh, and Rohrbach fail to teach each and every element of the claimed invention. For example, Applicants submit that Ellis fails to teach "a pocket configured to be located adjacent to the back of an individual during use," comprising in relevant part, "a left side and a right side that form a substantially rectangular holding area" (claim 30, lines 1 and 6). Ellis teaches at FIG. 1 (cited in the Office Action) a pouch 24 which is "adapted to adjustably receive an air lung 26 such as used by skin divers therein." (Col. 2, lines 1-3.) As is evident in the figure, Ellis' pouch 24, which the Office posits is analogous to the pocket of claim 30, is substantially cylindrical in shape, rather than rectangular, as in the invention of claim 30. As admitted in the Office Action, Ellis further fails to teach the feature of "the bottom flap permanently affixed to at least one of: the outer side, the left side, or the right side and extending therefrom during opening." (Claim 30, lines 10-11.)

Applicants further submit that Ellis fails to teach the feature of "means for releasably attaching the bottom flap ... such that the individual can open the bottom flap by pulling in a downward manner with one hand while the pocket is adjacent to the back" (*id.*, lines 12-14), as nothing in the reference indicates that Ellis' air lung could be removed by the vest wearer while keeping the pocket "adjacent to the back."

Applicants further argue that Roh fails to cure the defects in the rejection left by Ellis. Roh fails to teach the feature of “the bottom flap permanently affixed to at least one of: the outer side, the left side, or the right side and extending therefrom during opening” (claim 30, lines 10-11), as Roh fails to teach a bottom flap of any kind. Even if Roh did disclose this feature, however, Applicants assert that one having ordinary skill in the art would not be motivated to combine the teachings of Ellis with those of Roh. As asserted above, Ellis teaches a vertically oriented, cylindrical pouch to be located adjacent to the back of an individual, however, Ellis’ pouch relies on “an enlarged portion 42” of belt 18 to provide a seat for the air lung (Col. 2, lines 70-72), rather than an actual bottom flap, permanently affixed or otherwise. Belt 18 as well as belt 20 are configured such that “the air lung 26 may be adjusted vertically through adjustment of the straps 18 and 20.” (Col. 2, lines 64-65.) Accordingly, Applicants submit that the teachings of Roh, which include flap permanently affixed, and therefore not vertically adjustable, to the top of the baby carrier, would not be relevant to the adjustable strap technology of Ellis. Accordingly, Applicants submit that one would not be motivated to combine the two, except through the hindsight gained from the present invention itself which would not have been obvious to a person skilled in the art prior to the present invention.

Applicants further argue that Rohrbach fails to cure the defects in Ellis and Roh, and also fails to teach the feature of “a means for adjusting a horizontal area of a backpack with an adjustable strap and buckle on either side of a pocket” at FIGS. 2-3, as it is unclear from these figures that the strap and buckle depicted provide horizontal adjustability of a horizontal area that includes a pocket.

Accordingly, Applicants assert that the sum total of Ellis, Rohr, and Rohrbach fails to disclose each and every element of the claimed invention.

With respect to dependent claims 31-36, Applicants respectfully submit that claims 31-36 are allowable for reasons stated above relative to independent claim 30, as well as for their own additional claimed subject matter.

For at least the reasons set forth above, the Applicants respectfully assert that the cited references, taken alone or in combination, do not disclose the above recited features of claim 30, and therefore cannot possibly render the recited subject matter obvious. As

such, the Applicants respectfully request that the Board overturn the rejection and allow claim 30 as well as the claims that depend therefrom.

C. The Examiner's rejection of independent claim 37 and dependent claims 38-40 is improper because the cited references do not teach a rectangular pocket with a bottom flap attached to a wheelchair.

With respect to claim 37, Applicants respectfully submit that Ellis, Roh, and Wakamatsu fail to teach each and every element of the claimed invention. For example, as discussed above with respect to claim 30, Ellis fails to teach "a bottom opening pocket" (claim 37, line 3) including, among other features, "a substantially rectangular holding area" (*id.*, line 7). As discussed above, Ellis instead teaches a vertically oriented, substantially cylindrical pouch. Additionally, neither Roh, nor a combination of Ellis with Roh teaches the features of "a bottom flap for covering the opening, the bottom flap permanently affixed to at least one of: the outer side, the left side, or the right side and extending therefrom during opening" (claim 37, lines 11-13).

Applicants further argue that Wakamatsu fails to render the invention of claim 37 obvious in view of the teachings and the above-noted deficiencies of Ellis and Roh. As discussed above, Ellis and Roh fail to teach each and every element of the claimed invention. Wakamatsu fails to compensate for the deficiencies of those references, as the Office only relies on Wakamatsu for the use of a pocket included in a wheelchair. Although Wakamatsu teaches the use of a top opening pocket used in conjunction with a wheelchair (FIG. 2), Applicants respectfully submit that Wakamatsu fails to teach a bottom opening pocket of any kind, or a need or use for the same. Accordingly, Applicants respectfully submit that the wheelchair comprising a chair and a bottom opening pocket of claim 37 is not rendered obvious in view of the cited prior art.

With respect to dependent claims 38-40, Applicants respectfully submit that claims 38-49 are allowable for reasons stated above relative to independent claim 37, and for their own additional claimed subject matter.

For at least the reasons set forth above, the Applicants respectfully assert that the cited references, taken alone or in combination, do not disclose the above recited features

of claim 37, and therefore cannot possibly render the recited subject matter obvious. As such, the Applicants respectfully request that the Board overturn the rejection and allow claim 37 as well as the claims that depend therefrom.

Conclusion

In view of the collective deficiencies of Young, Roh, Rohrbach, Lewis, Ellis, and Wakamatsu, the Office has failed to state a prima facie case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). In order to establish a prima facie case, the Examiner must show not only that the combination includes all the claimed elements, but must also provide a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the reference. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985). Not only do the cited prior art inventions fail to contain each and every element of the present invention, there is also no evidence that a person skilled in the arts would consider it obvious to combine those elements that do appear in the prior art to produce an invention similar to the present invention. The present invention fills a need for a carrying apparatus which can contain a variety of objects, with a bottom opening pocket covered by an outward-opening flap, allowing a user to instantly and safely retrieve the contents of the pocket without altering the position of the carrying apparatus. The unique features and combination of features of the present invention provide a unique and original solution to the needs of emergency rescue workers and others who must have immediate access to critical items, a solution which is not achieved, nor attempted, by any of the cited prior art inventions.

The Appellant respectfully submits that all pending claims are in condition for allowance.

Respectfully submitted,

Date: August 31, 2008

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8. APPENDIX OF CLAIMS ON APPEAL

Listing of Claims:

1-20. (Canceled)

21. A backpack configured to be worn on the back of an individual, the backpack comprising:

means for holding the backpack on the back in an upright position;

a first pocket attached to the means for holding, the first pocket being configured to be opened from at least one of: a side or a top of the pocket when the backpack is in the upright position; and

a bottom opening pocket attached to an exterior side of the large pocket, the bottom opening pocket including:

an outer side opposite the first pocket;

a left side and a right side that form a substantially rectangular holding area along with the outer side;

an opening at a bottom of the holding area when the backpack is in the upright position;

a bottom flap for covering the opening, the bottom flap permanently affixed to at least one of: the outer side, the left side, or the right side and extending therefrom during opening; and

means for releasably attaching the bottom flap to at least one of: the outer side, the left side, the right side, an inner side of the bottom opening pocket, or the large pocket such that the individual can open the bottom flap by pulling in a downward manner with one hand while wearing the backpack on the back.

22. The backpack of claim 21, further comprising means for adjustably configuring a horizontal area of the pocket.

23. The backpack of claim 22, wherein the means for adjustably configuring includes:
a left strap attached adjacent to the left side of the bottom opening pocket;
a right strap attached adjacent to the right side of the bottom opening pocket; and
a pair of buckles centrally attached on the outer side of the bottom opening pocket, the pair of buckles enabling adjustment of the left and right straps.
24. The backpack of claim 21, the means for releasably attaching including hook and loop fasteners.
25. The backpack of claim 21, the means for releasably attaching including at least one of: a pull cord, a loop, or a handle extending below the bottom flap.
26. The backpack of claim 21, the bottom opening pocket further including a zipper for attaching the bottom flap to at least one of: the outer side, the left side, the right side, an inner side of the bottom opening pocket, or the large pocket.
27. The backpack of claim 21, the bottom opening pocket further including:
a top flap for covering a top opening of the bottom opening pocket; and
means for releasably attaching the top flap to at least one of: the outer side, the left side, the right side, an inner side of the bottom opening pocket, or the large pocket.
28. The backpack of claim 21, wherein the left side and the right side include at least one of: padding or stiffening.
29. The backpack of claim 21, wherein the bottom flap is permanently affixed to the outer side of the bottom opening pocket.
30. A pocket configuring to be located adjacent to a back of an individual during use, the pocket comprising:
means for holding the pocket adjacent to the back;
an inner side adjacent the back;

an outer side opposite the back;
a left side and a right side that form a substantially rectangular holding area along with the inner side and the outer side;
means for adjustably configuring a horizontal area of the pocket;
an opening at a bottom of the holding area when the pocket is in the upright position;
a bottom flap for covering the opening, the bottom flap permanently affixed to at least one of: the outer side, the left side, or the right side and extending therefrom during opening;
means for releasably attaching the bottom flap to at least one of: the outer side, the left side, the right side, or the inner side such that the individual can open the bottom flap by pulling in a downward manner with one hand while the pocket is adjacent to the back; and
a zipper for attaching the bottom flap to at least one of: the outer side, the left side, the right side, or the inner side.

31. The pocket of claim 30, wherein the means for holding comprises a backpack.
32. The pocket of claim 30, wherein the means for holding comprises a vest.
33. The pocket of claim 30, wherein the means for holding comprises a wheelchair.
34. The pocket of claim 30, wherein the means for adjustably configuring includes:
 - a left strap attached adjacent to the left side of the bottom opening pocket;
 - a right strap attached adjacent to the right side of the bottom opening pocket; and
 - a pair of buckles centrally attached on the outer side of the bottom opening pocket, the pair of buckles enabling adjustment of the left and right straps.
35. The pocket of claim 30, further comprising:
 - a top flap for covering a top opening of the pocket; and

means for releasably attaching the top flap to at least one of: the outer side, the left side, the right side, or the inner side.

36. The pocket of claim 30, the means for releasably attaching including at least one of: a pull cord, a loop, or a handle extending below the bottom flap.

37. A wheelchair comprising:

- a chair including a seat and a back rest;

- a bottom opening pocket, the bottom opening pocket including:

 - means for holding the pocket adjacent to the back rest;

 - an inner side adjacent to the back rest;

 - an outer side opposite the back rest;

 - a left side and a right side that form a substantially rectangular holding area along with the inner side and the outer side;

 - an opening at a bottom of the holding area when the pocket is in the upright position;

 - a bottom flap for covering the opening, the bottom flap permanently affixed to at least one of: the outer side, the left side, or the right side and extending therefrom during opening; and

 - means for releasably attaching the bottom flap to at least one of: the outer side; the left side, the right side, or the inner side such that the individual can open the bottom flap by pulling in a downward manner with one hand while the pocket is adjacent to the back rest.

38. The wheelchair of claim 37, the pocket further including:

- a top flap for covering a top opening of the pocket; and

- means for releasably attaching the top flap to at least one of: the outer side, the left side, the right side, or the inner side.

39. The wheelchair of claim 37, the pocket further including means for adjustably configuring a horizontal area of the pocket.

40. The wheelchair of claim 37, the pocket further including a zipper for attaching the bottom flap to at least one of: the outer side, the left side, the right side, or the inner side.

9. **EVIDENCE APPENDIX**

None

10. **RELATED PROCEEDING APPENDIX**

None